

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

SALVADOR MARTINEZ #1645804 §  
v. § CIVIL ACTION NO. 6:13cv802  
JOHN A. RUPERT, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Salvador Martinez, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. As Defendants, Martinez named TDCJ Executive Director Brad Livingston, Warden John Rupert, Major Guillermo Delarosa, Nurse Practitioner Sarah Pierson, Nurses Rexie Gilmartin and Lynne Smith, Custodian of Medical Records Frankie Bostick, the University of Texas Medical Branch, and the Joe F. Gurney Transfer Facility Medical Staff. All of the individual defendants except for Livingston are located at the Coffield Unit of TDCJ-CID.

Separate motions to dismiss were filed by the Defendants Delarosa, Livingston, and Rupert; by the University of Texas Medical Branch; and by the Defendants Pierson, Gilmartin, Smith, and Bostick. The magistrate judge entered reports on each of the motions to dismiss, recommending that these be granted. The magistrate judge also recommended that the claims against the Joe F. Gurney Unit Transfer Facility Medical Staff be dismissed as frivolous.

Copies of the magistrate judge's reports were sent to Martinez at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except

upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the report of the magistrate judge. Upon such review, the Court has determined that the report of the magistrate judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

**ORDERED** that the reports of the magistrate judge (docket no.'s 29, 30, and 31) are hereby **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the Defendants' motions to dismiss (docket no.'s 11, 16, and 24) are hereby **GRANTED** and the Plaintiff's claims against these Defendants are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. It is further

**ORDERED** that the Plaintiff's claims against the Joe F. Gurney Unit Transfer Facility Medical Staff are **DISMISSED WITH PREJUDICE** as frivolous. It is further

**ORDERED** that the Clerk shall send a copy of this order to the Administrator of the Three Strikes List for the Eastern District of Texas. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

**SIGNED** this 13th day of February, 2015.



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MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE